

103D CONGRESS  
1ST SESSION

# H. R. 405

To require public disclosure of examination reports of certain failed depository institutions.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. STARK introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

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## A BILL

To require public disclosure of examination reports of certain failed depository institutions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Bank and Thrift Dis-  
5       closure Act of 1993”.

6       **SEC. 2. PUBLIC AVAILABILITY OF EXAMINATION INFORMA-**  
7       **TION.**

8       (a) IN GENERAL.—Each appropriate banking agency  
9       shall make available to the public copies of reports of all  
10       examinations of each failed depository institution that re-

1 ceived funds, as defined in section 6, or of a holding com-  
2 pany of such institution, that was performed by that bank-  
3 ing agency or its predecessor, during the 5-year period  
4 preceding the transfer, failure, or receipt of funds. Each  
5 appropriate banking agency other than the National Cred-  
6 it Union Administration Board shall consult with the Fed-  
7 eral Deposit Insurance Corporation or the Resolution  
8 Trust Corporation prior to making such reports available  
9 to the public.

10 (b) DELAY OF PUBLICATION.—

11 (1) THREATS TO SAFETY OR SOUNDNESS OF  
12 INSTITUTION.—If the appropriate banking agency  
13 makes a determination in writing that release of an  
14 examination report would seriously threaten the  
15 safety or soundness of an insured depository institu-  
16 tion, such agency may initially delay release of the  
17 examination report for a reasonable period of time,  
18 not to exceed 12 months from the date of the trans-  
19 fer, failure, or receipt of funds described in section  
20 6. Such determination may be renewed on an annual  
21 basis.

22 (2) ONGOING INVESTIGATIONS.—If the appro-  
23 priate banking agency or the Resolution Trust Cor-  
24 poration determines in writing that release of a por-  
25 tion of an examination report would hinder an ongo-

1        ing investigation of alleged negligence, or of other  
2        activity that would give rise to either administrative  
3        or civil proceedings, the portion of the examination  
4        report directly pertaining to the alleged negligence  
5        or other activity, may be withheld from release dur-  
6        ing the investigation, until a notice of charges is is-  
7        sued, a complaint is filed, or for a period not to ex-  
8        ceed 24 months from the date of the transfer, fail-  
9        ure, or receipt of funds described in section 6,  
10       whichever is earlier.

11            (3) DELAY PENDING CRIMINAL INVESTIGA-  
12       TION.—If the appropriate banking agency and the  
13       Attorney General of the United States or the attor-  
14       ney general of a State, in the case of a State-char-  
15       tered depository institution, jointly determine that  
16       release of a portion of an examination report would  
17       hinder an ongoing investigation of alleged criminal  
18       activity, the portion of the examination report di-  
19       rectly pertaining to the alleged crime may be with-  
20       held from release until the termination of such in-  
21       vestigation, the issuance of an indictment, or for a  
22       period of not to exceed 5 years from the date of the  
23       transfer, failure or receipt of funds described in sec-  
24       tion 6, whichever is earlier. The Attorney General of  
25       the United States or the attorney general of a State

1       shall provide the Comptroller General of the United  
2       States with access to information regarding any  
3       such criminal investigation, and shall identify any  
4       law enforcement agencies or resources assigned to  
5       the investigation.

6       (c) EXCLUSION OF OPEN INSTITUTIONS.—

7           (1) OPEN INSTITUTIONS.—This section shall  
8       not apply to any open insured depository institution  
9       and shall not be construed to require disclosure to  
10      the public of any report of examination of any open  
11      insured depository institution.

12          (2) AFFILIATED SOLVENT INSTITUTIONS.—In  
13      connection with the release of an examination report  
14      of a holding company of a failed institution, nothing  
15      in this section shall be construed as requiring the re-  
16      lease of any examination report information regard-  
17      ing any solvent depository institution that is also a  
18      subsidiary of such holding company.

19   **SEC. 3. PROHIBITION OF CONFIDENTIAL SETTLEMENTS.**

20      Notwithstanding any other provision of law or any  
21      rule, regulation, or order issued thereunder, all agree-  
22      ments or settlements of claims between the Resolution  
23      Trust Corporation or the Federal Deposit Insurance Cor-  
24      poration and any other party, where such agreement or

1 claim relates to an institution described in section 6 shall  
2 be made available to the public.

3 **SEC. 4. APPLICABILITY.**

4 The requirements of section 2 shall apply—

5 (1) to any insured depository institution that  
6 has had its assets or liabilities, or any part thereof,  
7 transferred to the FSLIC Resolution Fund or the  
8 Resolution Trust Corporation;

9 (2) to any member of the Bank Insurance Fund  
10 that has failed and received funds, if during either  
11 the fiscal year in which the institution failed or the  
12 fiscal year in which the institution received funds, as  
13 defined in section 6, the Bank Insurance Fund—

14 (A) had outstanding loans, or had other-  
15 wise received funds, from the Department of  
16 the Treasury, the Federal Financing Bank, or  
17 any Federal Reserve bank; or

18 (B) had a negative fund balance;

19 (3) to any member of the Savings Association  
20 Insurance Fund that has failed and received funds,  
21 if during either the fiscal year in which the institu-  
22 tion failed or the fiscal year in which the institution  
23 received funds, as defined in section 6, the Savings  
24 Association Insurance Fund—

1 (A) had outstanding loans, or had other-  
2 wise received funds, from the Department of  
3 the Treasury, the Federal Financing Bank, or  
4 any Federal Reserve bank; or

5 (B) had a negative fund balance; and

6 (4) to any insured credit union that has failed  
7 and received funds, if during either the fiscal year  
8 in which the credit union failed or the fiscal year in  
9 which the credit union received funds, as defined in  
10 section 6, the National Credit Union Share Insur-  
11 ance Fund—

12 (A) had outstanding loans, or had other-  
13 wise received funds, from the Department of  
14 the Treasury, the Federal Financing Bank, or  
15 any Federal Reserve Bank; or

16 (B) had a negative fund balance.

17 **SEC. 5. REMOVAL OF CUSTOMER INFORMATION FROM EX-**  
18 **AMINATION REPORTS.**

19 In making available reports of examinations under  
20 section 2, the appropriate Federal banking agency shall  
21 excise the following information:

22 (1) NONINSTITUTION-AFFILIATED PARTIES.—  
23 The names and all other identifying information for  
24 all persons who are not institution-affiliated parties  
25 of an insured depository institution.

1           (2) INSTITUTION-AFFILIATED PARTIES.—The  
2 names and any information related to an institu-  
3 tion-affiliated party that is not relevant to the rela-  
4 tionship between the insured depository institution  
5 and the institution-affiliated party.

6           (3) OPEN INSTITUTIONS.—The names and all  
7 other identifying information pertaining to open in-  
8 sured depository institutions.

9           (4) EXAMINERS.—Any reference to the examin-  
10 ers and other banking agency employees involved in  
11 the examination of the insured depository institu-  
12 tion.

13           (5) WHISTLEBLOWERS.—All references to per-  
14 sons or entities that have provided information in  
15 confidence to a banking agency which may be uti-  
16 lized to pursue a civil or criminal action.

17 **SEC. 6. DEFINITIONS.**

18 For purposes of this section—

19           (1) an insured depository institution has  
20 “failed” if the Federal Deposit Insurance Corpora-  
21 tion, Resolution Trust Corporation, or National  
22 Credit Union Administration Board—

23                   (A) has been appointed as receiver or liq-  
24 uidator for such institution; or

1 (B) has exercised the power to provide as-  
2 sistence under section 13(c)(2) of the Federal  
3 Deposit Insurance Act or the analogous powers  
4 under section 21A of the Federal Home Loan  
5 Bank Act.

6 (2) an insured depository institution has “re-  
7 ceived funds” if the institution, its holding company,  
8 or an acquiring institution receives cash or other val-  
9 uable consideration from the National Credit Union  
10 Administration Board, the Resolution Trust Cor-  
11 poration, the Federal Deposit Insurance Corpora-  
12 tion, or any Federal Reserve bank that lends for  
13 more than 30 days while the insured depository in-  
14 stitution is critically undercapitalized within the 1-  
15 year period prior to the failure of the insured deposi-  
16 tory institution whether in the form of a loan, a pay-  
17 ment to depositors or other creditors, the assump-  
18 tion of liabilities, or otherwise;

19 (3) the term “insured depository institution”  
20 has the same meaning as in section 3 of the Federal  
21 Deposit Insurance Act, except that such term in-  
22 cludes an insured credit union, as defined in section  
23 101 of the Federal Credit Union Act; and

24 (4) the term “appropriate banking agency”  
25 means the Federal Deposit Insurance Corporation,



1 the Board of Governors of the Federal Reserve Sys-  
2 tem, the Comptroller of the Currency, the Office of  
3 Thrift Supervision, or the National Credit Union  
4 Administration Board, and, in the case of a State-  
5 chartered depository institution, the appropriate  
6 State depository institution regulatory agency.

7 **SEC. 7. ADDITIONAL DISCLOSURES BY FDIC, NCUA, AND**  
8 **RTC.**

9 (a) BORROWERS.—Not later than 6 months after  
10 being appointed receiver or liquidator for any failed insti-  
11 tution that received funds, as defined in section 6, the  
12 Federal Deposit Insurance Corporation, National Credit  
13 Union Administration, or the Resolution Trust Corpora-  
14 tion, as appropriate, shall make available to the public the  
15 name and loan balance of any borrower who—

16 (1) was an executive officer, director, or prin-  
17 cipal shareholder of the institution, or a related in-  
18 terest of any such person, as such terms are defined  
19 in section 22(h) of the Federal Reserve Act; and

20 (2) at the time that the receiver was appointed,  
21 was more than 90 days delinquent on a loan.

22 (b) TRANSACTIONS.—Not later than 12 months after  
23 being appointed receiver or liquidator for any failed insti-  
24 tution that received funds, as defined in section 6, the  
25 Federal Deposit Insurance Corporation, the National

1 Credit Union Administration Board, or the Resolution  
2 Trust Corporation shall make available, and update peri-  
3 odically thereafter, a list of pending and settled lawsuits  
4 brought by such agency involving transactions (other than  
5 those listed in subsection (a)) that caused a material loss  
6 to such institution or to the deposit insurance fund.

7 **SEC. 8. GAO AUDITS.**

8       The Comptroller General shall selectively audit exam-  
9 ination reports made available to the public by the appro-  
10 priate Federal banking agencies under section 2, and dis-  
11 closures made by the Federal Deposit Insurance Corpora-  
12 tion, National Credit Union Administration, and Resolu-  
13 tion Trust Corporation under section 7, to assess compli-  
14 ance with the requirements of those sections. The Comp-  
15 troller General shall determine the nature, scope, terms,  
16 and conditions of audits conducted under this section.

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